



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201309024

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEC -7 2012

T:EP:RA:TI

Uniform Issue List: 408.03-00

Legend

Taxpayer A	=
IRA Account B	=
Account C	=
Amount 1	=
Amount 2	=
Amount 3	=
Bank L	=

Dear :

This letter is in response to a request for a letter ruling dated October , 20 , as supplemented by correspondence dated November 20 , in which you requested, through your authorized representative, a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the "Code").

The following facts and representations were submitted under penalty of perjury in support of your request for a waiver.

Taxpayer A represents that he withdrew all of the assets equal to Amount 1 from IRA Account B, an individual retirement account within the meaning of section 408(a) of the Code, which was maintained with Bank L. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3)(A) was due to the failure of Bank L to deposit Amount 2 of the distribution into a rollover IRA account.

Taxpayer A retired in 2007 and on January , 20 , he rolled his retirement savings into IRA Account B with Bank L. On July , 20 , Taxpayer A

responded to a notification by Bank L that the Certificate of Deposit ("CD") held in Taxpayer A's IRA Account B was scheduled to mature. Taxpayer A represents that he went to Bank L on that date with the intention of renewing the CD and moving some funds to his personal checking account to be used for living and medical expenses. Taxpayer A withdrew Amount 1 from IRA Account B with the intention of rolling over Amount 2 into another IRA CD with Bank L, and using the balance (Amount 1 less Amount 2) to purchase a non-IRA CD to pay for living and medical expenses. However, the employee of Bank L who was handling the transaction mistakenly deposited Amount 2 into non-IRA Account C. Taxpayer A first became aware that Amount 2 had been used to purchase a non-IRA CD when he received the Form 1099-R in 2011. As of October 31, 2011, the balance in non-IRA Account C is equal to Amount 3, which represents Amount 2 less additional monthly living expenses during 2011 and 2012.

Based on the above facts and representations, you request that the Service waive the 60-day rollover requirement with respect to the rollover of Amount 2 from IRA Account B.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if:

(i) the entire amount received (including money or any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i).

from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary of the Treasury may waive the 60-day requirement under sections 408(d)(3)(A) and (D) where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I).

Revenue Procedure 2003-16, 2003-4 I.R.B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted show that Taxpayer A intended to roll over Amount 2 into an IRA CD and that the employee of Bank L handling the transaction mistakenly deposited Amount 2 into non-IRA Account C.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of Amount 2. Taxpayer A is granted a period of 60 days from the issuance of this letter ruling to contribute Amount 2 or a portion thereof into a rollover IRA. Provided all other requirements of section 408(d)(3), except the 60-day rollover requirement, are met with respect to such contribution, the contribution will be considered a rollover contribution within the meaning of section 408(d)(3).

Please note that, pursuant to section 408(d)(3)(E) of the Code, this ruling does not authorize the rollover of section 401(a)(9) minimum required distributions.

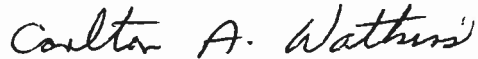
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations that may be applicable hereto.

This letter ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

If you have any questions regarding this ruling, you may contact.

Sincerely yours,



Carlton A. Watkins, Manager  
Employee Plans Technical Group 1

Enclosures:

Notice of Intention to Disclose

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cc: